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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket #96-98  
~~CC Docket #96-98~~

In the Matter of

Request By ALTS For Clarification Of The  
Commission's Rules Regarding Reciprocal  
Compensation For Information Service  
Provider Traffic

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) File No.  
) CCB/CPD 97-30  
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REPLY COMMENTS

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## SUMMARY

The Commission should dismiss or deny the request of ALTS for a ruling that calls to information service providers ("ISPs") should qualify for reciprocal compensation under sections 251 and 252 of the Communications Act when such traffic is exchanged between ILECs and CLECs. There is no factual, legal, or policy basis for such a ruling.

Calls to the Internet through ISPs that originate on the network facilities of an incumbent LEC do not "terminate" on the network facilities of a CLEC, as would be required for reciprocal compensation to apply under section 252(d)(2) of the Act. To the contrary, a single such call may communicate with interstate, foreign, and local destinations simultaneously. As a jurisdictional matter, such traffic cannot be considered "local."

It is well-established that whether a communication is interstate, and thus is subject to the Commission's jurisdiction, depends on its end-to-end nature. Under this analysis, the Commission's authority over interstate ISP traffic is clear. Several proponents of the ALTS position present alternative jurisdictional theories that are meritless. The Commission should reject these efforts to limit its end-to-end jurisdiction with respect to ISP traffic. Nor do the Commission's findings in its recent interconnection, universal service, and access charge orders support the claims in the ALTS letter.

Contrary to the claims of CLECs, no competitive harm results if CLECs do not receive "reciprocal" compensation for ISP traffic. Indeed, by dismissing or denying the ALTS letter, the Commission would ensure that CLECs and incumbent LECs would receive absolutely equal, and competitively neutral, treatment.

Even if the "clarification" requested in the ALTS letter were tenable, which is not the case, the Eighth Circuit's recent decision in *Iowa Utilities Board v. FCC* makes clear

that, under the Act, the states, not the Commission, have jurisdiction over reciprocal compensation arrangements. If the Commission provides the requested "clarification," the Commission's jurisdiction would end with such a finding. In light of the interstate and international nature of ISP traffic, such a result makes no sense.

Although the Commission's jurisdiction over ISP traffic is clear, BellSouth recognizes the complicated nature of the issues within that jurisdiction. Numerous regulatory issues, including the proper separations treatment of such traffic, must be resolved. The Commission's pending inquiry on information services, and not the ALTS letter, is a proper vehicle for resolving those issues.

## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY . . . . .	i
I. INTRODUCTION . . . . .	1
II. THE COMMISSION SHOULD DISMISS OR DENY THE ALTS LETTER . . . . .	2
A. Calls To ISPs Cannot Be Considered Local, As ALTS Requests The Commission To Rule . . . . .	2
B. In The Alternative, If Calls To ISPs Are "Local" Rather Than Interstate, The Commission Would Have No Authority Over The Reciprocal Compensation Provisions Of Interconnection Agreements . . . . .	10
III. CONCLUSION . . . . .	14

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REPLY COMMENTS

I. INTRODUCTION

BellSouth Corporation ("BellSouth") hereby submits its reply comments opposing the request of the Association for Local Telecommunications Services ("ALTS") for "clarification" that "nothing in the Local Competition Order requires that calls to an Information Service Provider ('ISP') be handled differently than other local traffic is handled under current reciprocal compensation agreements in situations where local calls to ISPs are exchanged between ILECs and CLECs."<sup>1/</sup> BellSouth was one of the signatories of the comments filed by the United States Telephone Association ("USTA") and member

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<sup>1/</sup> Letter from Richard J. Metzger, ALTS, to Regina M. Keeney, Chief, Common Carrier Bureau, FCC (June 20, 1997) ("ALTS Letter"). The Commission requested public comment on the ALTS Letter, *see* FCC Public Notice, DA 97-1399 (rel. July 2, 1997), and then extended the time for filing reply comments to July 31, 1997. *See* Order, DA 97-1543, File No. CCB/CPD 97-30 (Comp. Pricing Div., CCB, rel. July 22, 1997).

companies submitted on July 17, 1997 in this proceeding, which also opposed the ALTS letter.<sup>2/</sup>

The ALTS letter is incorrect as a matter of fact, law, and policy. Because it is meritless, it should be dismissed or denied. In doing so, the Commission should explain the jurisdictionally complex nature of ISP traffic and resolve the interstate policy issues raised by such traffic.

## II. THE COMMISSION SHOULD DISMISS OR DENY THE ALTS LETTER

### A. Calls To ISPs Cannot Be Considered Local, As ALTS Requests The Commission To Rule

There is no basis in fact or law for the Commission to conclude that the calls to ISPs at issue in the ALTS letter are intrastate, let alone "local" for reciprocal compensation purposes.<sup>3/</sup> Because ALTS and its supporters are patently incorrect in asserting that such calls are "local," the Commission should dismiss or deny the ALTS letter. Calls to the Internet through ISPs that originate on the network facilities of an incumbent LEC do not "terminate" on the network facilities of a CLEC, as would be required for reciprocal

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<sup>2/</sup> See Comments of USTA and Member Companies, CCB/CPD 97-30 (filed July 17, 1997) ("Comments of USTA"). All references to "Comments" hereafter are to comments filed in this proceeding on or about July 17, 1997, unless otherwise noted.

<sup>3/</sup> Reciprocal compensation refers to

[T]he mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier[.]

47 USC § 252(d)(2)(A)(i). The references in the ALTS letter to "local" calls apparently constitute a shorthand way of referring to calls that satisfy this statutory requirement.

compensation to apply under section 252(d)(2) of the Communications Act.<sup>4/</sup> As a factual matter, such calls traverse the CLEC's facilities to the ISP and the Internet and communicate with multiple destinations, often simultaneously, that may cross state and national boundaries.<sup>5/</sup> As USTA and Ameritech note, because such calls may be communicating with destinations in multiple jurisdictions at the same time, Internet traffic is jurisdictionally inseverable.<sup>6/</sup> As a result, the Commission should exercise its jurisdiction with respect to such traffic.<sup>7/</sup>

As a legal matter, ISP traffic cannot be considered to be "local."<sup>8/</sup> The Commission's jurisdiction extends over interstate and foreign communication by wire or radio.<sup>9/</sup> "Communication by wire" is defined as

[T]he transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including the instrumentalities, facilities,

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<sup>4/</sup> See 47 U.S.C. § 252(d)(2). Sections 251 and 252 of the Communications Act of 1934 (the "Communications Act" or the "Act") were added by the Telecommunications Act of 1996 (the "1996 Act").

<sup>5/</sup> See Comments of Ameritech at 11-13, *citing* Kevin Werbach, *Digital Tornado: The Internet and Telecommunications Policy*, FCC, OPP Working Paper No. 29 (Mar. 1997) ("Digital Tornado") at 19, 26, 27; Comments of USTA at 8-9, *citing* Digital Tornado at 45.

<sup>6/</sup> See Comments of USTA at 8-9; Ameritech at 12-13.

<sup>7/</sup> See *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355 (1986) at n.4.

<sup>8/</sup> See, e.g., Comments of Ameritech at 4; USTA at 8.

<sup>9/</sup> See 47 U.S.C. § 152(a). The Eighth Circuit's recent decision in *Iowa Utilities Board et al v. FCC*, No. 96-3321, slip op. (8th Cir. July 18, 1997) ("*Iowa Utilities Board*") does not limit in any way the Commission's plenary authority over interstate communications by wire or radio.

apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.<sup>10/</sup>

A call from, *e.g.*, an individual to one or more websites through an ISP is such a communication. Even if the ISP "forwards" the call from the individual to the websites, the communication does not end at the ISP's facilities. Whether a communication is interstate depends on its end-to-end nature.<sup>11/</sup> As the Commission held in the Teleconnect Order,

[W]e regulate an interstate wire communication under the Communications Act from its inception to its completion. Such an interstate communication does not end at an intermediate switch.<sup>12/</sup>

Individuals accessing websites on the Internet through their ISPs do not seek to communicate with the ISPs, which, in general, merely serve as intermediate switches or facilities for Internet access. Instead, Internet users seek, through ISPs, to communicate with sites that may be in other states or other nations. The ensuing transmissions, assuming that they use wireline facilities, are clearly interstate or foreign "communication by wire or radio" with the distant sites.

The fact that a single call through an ISP to the Internet can simultaneously access destinations in other states and other nations, as well as local ones, demonstrates that such traffic cannot be categorized merely as "local." Although some parties insist on equating ISPs with such businesses as pizza delivery firms, ticket or travel agencies, and taxicab

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<sup>10/</sup> 47 U.S.C. § 153(51). A similar definition exists for "communication by radio." See 47 U.S.C. § 153(33).

<sup>11/</sup> See *Teleconnect Co. v. Bell Telephone Co. of Penn. et al*, 10 FCC Rcd 1626, 1629-30 (1995) ("Teleconnect Order"), *aff'd*, *Southwestern Bell Telephone Co. v. FCC*, No. 95-1193 (D.C. Cir. June 27, 1997).

<sup>12/</sup> Teleconnect Order, *supra* note 11, at 1629.



companies because they all originate little or no traffic.<sup>13/</sup> such comparisons are totally irrelevant for jurisdictional purposes. Numerous large purchasers of services such as interstate foreign exchange ("FX") service also predominantly, or exclusively, receive, rather than transmit, traffic, and the Commission's jurisdiction over such services is clear.

Nor does the jurisdictional classification of Internet traffic depend on the point at which it leaves the public switched telephone network.<sup>14/</sup> Neither the Commission nor the courts has recognized such a limitation on the Commission's end-to-end jurisdiction over interstate communications.<sup>15/</sup> Indeed, the Commission's jurisdiction over the interstate aspects of private networks and CPE, which are not parts of the traditional public switched telephone network, is well-established, as is its jurisdiction with respect to interstate enhanced services.<sup>16/</sup>

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<sup>13/</sup> See, e.g., Comments of WorldCom at 7; Adelphia, *et al*, at 8. Such commenters ignore the fact that ISPs, unlike those businesses, routinely provide intermediate facilities as part of end-to-end interstate or foreign communications to other sites.

<sup>14/</sup> See, e.g., Comments of America Online, Inc. ("AOL") at 7; Cox Communications, Inc. at 9.

<sup>15/</sup> See *United States v. AT&T*, 57 F. Supp. 451, 454-455 (S.D.N.Y. 1944) (rejecting a claim that the FCC's jurisdiction over interstate wire communication ends at the switchboard of a PBX), *aff'd*, *Hotel Astor Inc. v. United States*, 325 U.S. 837 (1945), *Ambassador, Inc. v. United States*, 325 U.S. 317 (1945). Cf. *Southern Pacific Communications Company Tariff F.C.C. No. 4*, 61 FCC 2d 144, 146 (1976) ("As we have often recognized, this Commission's jurisdiction over interstate communications does not end at the local switchboard, it continues to the transmission's ultimate destination.").

<sup>16/</sup> See *NARUC v. FCC*, 737 F.2d 1095, 1138-1144 (D.C. Cir. 1984) (affirming Commission jurisdiction over the interstate aspects of "leaky PBXs" and private communications systems); *Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982) (CPE). Cf. *Petition for Emergency Relief and Declaratory Ruling Filed By BellSouth Corporation*, 7 FCC Rcd 1619 (1992), *aff'd Georgia Pub. Serv. Comm'n v. FCC*, 5 F.3d 1499 (11th Cir. 1993) ("Voice Mail Preemption Order") (noting Commission jurisdiction over interstate enhanced services).

Similarly, the efforts of some parties to draw jurisdictional distinctions based on the presence or absence of technical attributes such as returned answer supervision<sup>17/</sup> or packet switching<sup>18/</sup> are baseless. The end-to-end nature of calls to ISPs, not the technical means by which they are transported, determines their jurisdictionally interstate treatment. In this regard, CompuServe argues that data calls to it should qualify for reciprocal compensation even though such calls travel from its "local nodes" through interexchange carrier ("IXC") facilities to Compuserve's "host computers."<sup>19/</sup> From the description in CompuServe's comments, Internet-bound traffic must traverse Compuserve's interstate network before even reaching the Internet. In no way can such calls be considered to "terminate" on a local network as required by section 252. AOL, which has a similar network, makes equally incorrect claims.<sup>20/</sup>

Some parties parrot the ALTS letter by arguing that the Commission should consider only the portion of ISP calls that take place within the local exchange.<sup>21/</sup> As USTA has noted,<sup>22/</sup> the Commission has rejected attempts to divide interstate communications into

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<sup>17/</sup> See, e.g., Comments of KMC Telecom, Inc. at 5.

<sup>18/</sup> See Comments of Adelphia *et al* at 17 (stating that packet-switched data transactions are not "calls").

<sup>19/</sup> See Comments of CompuServe at 2.

<sup>20/</sup> See Comments of CompuServe at 2, 4-5; AOL at 6-8. AOL's long-running brushes with state and federal legal authorities are well-known. See R. Chandrasekaran, *AOL Cancels Plan For Telemarketing: Disclosure of Members' Numbers Protested*, Wash. Post, G1 (July 25, 1997). These ISPs and others have benefitted for years from the Commission's exemption of enhanced service providers from access charges, and now seek further advantages through subsidies to CLECs.

<sup>21/</sup> See, e.g., ALTS Letter at 6; Comments of Dobson Communications Corp. at 4-5; GST Telecom Inc. at 5; KMC Telecom, Inc. at 5-6.

<sup>22/</sup> See Comments of USTA at 5.

"two calls," both in the context of enhanced or information services<sup>23/</sup> and telecommunications services.<sup>24/</sup>

Several commenters also argue that it would be anticompetitive if calls to ISPs were excluded from reciprocal compensation, since, for example, CLECs would be "denied compensation" for these calls.<sup>25/</sup> Others claim that CLECs would have to pay for upkeep and maintenance of "heavily-used" ISP lines without compensation for transport and termination and without significant outgoing traffic from ISPs.<sup>26/</sup>

If CLECs do not receive "reciprocal" compensation for ISP traffic, no anticompetitive harm results. To the contrary, CLECs and incumbent LECs would receive absolutely equal, and competitively neutral, treatment. It is illogical and unreasonable to even label as "reciprocal" the compensation scheme of sections 251 and 252 since there is no "reciprocal" traffic associated with calls to ISPs. Rather than providing subsidies to CLECs through a regulation-driven compensation scheme that reflects imaginary "reciprocal" traffic, it is both reasonable and fair for CLECs to recover the costs of providing service to ISPs from ISPs directly, as incumbent LECs attempt to do.<sup>27/</sup>

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<sup>23/</sup> See, e.g., Voice Mail Preemption Order, *supra* note 16.

<sup>24/</sup> See Teleconnect Order, *supra* note 11, at 1629-1630.

<sup>25/</sup> See, e.g., Comments of Teleport Communications Group Inc. ("Teleport") at 9.

<sup>26/</sup> See Comments of KMC Telecom Inc. at 9.

<sup>27/</sup> Incumbent LECs' efforts to recover such costs would be improved by adoption of a rational pricing system. The Commission is examining this issue in its pending inquiry on information services. See *Access Charge Reform*, CC Docket No. 96-262, Notice of Proposed Rulemaking, Third Report and Order and Notice of Inquiry, FCC 96-488 (rel. Dec. 24, 1996).

At least one CLEC, some cable companies, an IXC, and an ISP, recognize that ISP traffic is jurisdictionally interstate, but argue nonetheless that the Commission should treat such traffic as if it qualified for reciprocal compensation under the Act.<sup>28/</sup> Traffic that originates or terminates within a local exchange area and is therefore subject to reciprocal compensation is not jurisdictionally interstate and thus is not subject to the Commission's authority. Calls to the Internet, however, are not within this category. The Commission should continue to assert jurisdiction over the Internet for reasons of both law and policy.

Contrary to some claims, none of the Commission's recent major orders alters the Commission's end-to-end jurisdiction over ISP traffic or otherwise redefines such calls as local for purposes of reciprocal compensation.<sup>29/</sup> As discussed below, in *Iowa Utilities Board*, the Eighth Circuit found that, with limited exceptions, the state commissions -- and not the FCC -- have legal authority over the pricing provisions of sections 251 and 252 of the Communications Act. The court vacated the Commission's rules, adopted in its Interconnection Order,<sup>30/</sup> regarding reciprocal compensation obligations.<sup>31/</sup> Even if those rules had not been vacated, the Interconnection Order did not find that ISP traffic is local, as

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<sup>28/</sup> See Comments of SpectraNet, International at 3-4 (CLEC), Adelphia Communications Corporation, *et al*, at 5 (cable companies); AT&T at 2 (IXC); CompuServe, Incorporated at 4 (ISP).

<sup>29/</sup> See, *e.g.*, Comments of AOL at 7.

<sup>30/</sup> See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1966*, CC Docket No. 96-98, *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-185, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996) ("Interconnection Order").

<sup>31/</sup> See, *e.g.*, Comments of AOL at 7, *citing* Interconnection Order, 11 FCC Rcd at 16015.

opposed to interstate or intrastate interexchange traffic, and the ALTS letter misquoted that order in attempting to so argue.<sup>32/</sup>

Nor does the Universal Service Order<sup>33/</sup> lend credence to a finding that ISP calls originate on the network facilities of one LEC and terminate on the facilities of another for purposes of section 252(d)(2). Again, *Iowa Utilities Board* holds that states, not the Commission, are to implement the pricing provisions of that section. Although parties cite ¶ 789 of the Universal Service Order for the proposition that a connection to an Internet service provider via the public switched network is "distinguishable" from the Internet service provider's offering,<sup>34/</sup> the Commission in that paragraph was not discussing sections 251 or 252 of the Communications Act. Rather, the Commission was attempting to justify its decision to exempt Internet service providers from universal service contributions.<sup>35/</sup>

Indeed, the Universal Service Order describes the relationship between information services and telecommunications services differently depending on its purpose. In ¶ 444 of the Universal Service Order, the Commission defines "basic, conduit" access to the Internet for the purpose of providing discounts to eligible schools and libraries. An integral part of such access includes information services that include the transmission of information as a common carrier, transmission of information as part of a gateway to an information service,

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<sup>32/</sup> See Comments at USTA at 2-3 (correcting "selective and misleading" quotation by ALTS).

<sup>33/</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157 (rel. May 8, 1997).

<sup>34/</sup> See, e.g., Comments of Teleport at 4.

<sup>35/</sup> See Universal Service Order ¶ 788.

and e-mail. Thus, for this purpose, and in contrast to its discussion in ¶ 789, the Universal Service Order recognized an integrated set of telecommunications and information services related to Internet access.

As noted by both USTA and Ameritech, the Commission's recent Access Charge Order<sup>36/</sup> reaffirms Commission jurisdiction over ISP traffic. The Access Charge Order only treats ISPs as "end users" -- a term defined in the Commission's access charge rules -- "for purposes of the access charge system."<sup>37/</sup> Nothing in that order indicates an intent by the Commission to forsake or limit its authority over interstate ISP traffic, either in the context of access charges or for purposes of reciprocal compensation. To the contrary, the Commission's special treatment of ISPs as "end users" in its access charge rules is a demonstration of its continued authority over them.<sup>38/</sup>

B. In The Alternative, If Calls To ISPs Are "Local" Rather Than Interstate, The Commission Would Have No Authority Over The Reciprocal Compensation Provisions Of Interconnection Agreements

Even if the Commission were to take the novel and dramatic step of declaring that ISP traffic originates on the network facilities of one LEC and terminates on the facilities of another for purposes of reciprocal compensation, it would have no further authority over the reciprocal compensation arrangements at issue in the ALTS letter.

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<sup>36/</sup> See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, FCC 97-158 (rel. May 16, 1997) ("Access Charge Order").

<sup>37/</sup> *Id.* ¶ 348.

<sup>38/</sup> See Comments of Ameritech at 5-8; USTA at 2-4.

In *Iowa Utilities Board*, the Eighth Circuit reviewed the Interconnection Order and held that the Commission had exceeded its jurisdiction in promulgating pricing rules regarding local telephone service under sections 251 and 252 of the Act.<sup>39/</sup> The court vacated most of the Commission's pricing rules, including its specific rules governing the transport and termination of local traffic and reciprocal compensation. The Eighth Circuit found that

Nowhere in section 251 is the FCC authorized specifically to issues rules governing the rates for interconnection, unbundled access, and resale, and the transport and termination of telecommunications traffic.

\* \* \*

The absence of any direct FCC pricing authority over local telephone service is fatal to the [FCC's] theory that the Act requires the state commissions to share such local pricing authority with the FCC.<sup>40/</sup>

The court also held that the FCC's pricing rules for local services were not consistent with section 2(b) of the Communications Act.<sup>41/</sup>

As a result, state commissions, and not the FCC, have authority over the implementation of reciprocal compensation pursuant to section 252(d)(2) for calls that originate on the network facilities of an incumbent LEC and terminate on the network facilities of a CLEC. Accordingly, if the Commission were to determine -- contrary to law and fact -- that calls to ISPs so originate and terminate, its authority over such traffic would

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<sup>39/</sup> See *Iowa Utilities Board*, *supra* note 9. at 8-34.

<sup>40/</sup> *Id.* at 14, 16; see also *id.* at nn. 21, 39 (vacating 47 CFR §§ 51.701-51.717, the Commission's rules governing transport and termination and reciprocal compensation, except as certain provisions apply to Commercial Mobile Radio Service ("CMRS") providers, which are not the subject of the ALTS letter).

<sup>41/</sup> See *id.* at 19-34.

end with that determination. If the Commission provides the "clarification" requested in the ALTS letter, the treatment of ISP traffic will become a matter of exclusive state concern. In light of the interstate and international nature of ISP traffic, such a result would border on the bizarre.

The ALTS letter and several commenters make general allegations of unlawful discrimination by incumbent LECs that correctly treat calls to ISPs as jurisdictionally interstate. As USTA noted, such allegations are undocumented, and, in the context of the "expedited letter clarification" requested by ALTS, are procedurally improper.<sup>42/</sup> Mechanisms exist to pursue claims of unlawful discrimination with respect to interstate traffic. In this regard, *Iowa Utilities Board* establishes that the Commission does not have jurisdiction over complaints brought under section 208 of the Act to the extent that they seek the Commission to enforce the terms of interconnection agreements under sections 251 and 252 or to review the terms of agreements approved by state commissions under these provisions.

Contrary to the Commission's view of its section 208 authority expressed in the Interconnection Order, the Eighth Circuit found that

[T]he FCC's authority under Section 208 does not enable the Commission to review state commission determinations or to enforce the terms of interconnection agreements under the Act. Instead, subsection 252(e)(6) directly provides for federal district court review of state court determinations when parties wish to challenge such determinations. 47 U.S.C.A. § 252(e)(6).<sup>43/</sup>

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<sup>42/</sup> See Comments of USTA at 7, n. 21.

<sup>43/</sup> *Iowa Utilities Board*, *supra* note 9, at 46-47.



The court held further that federal district court review is the exclusive means of reviewing state commission decisions on these matters.

Accordingly, specific complaints related to pricing of the local traffic that is the subject of reciprocal compensation arrangements -- as opposed to interstate ISP traffic -- are the province of the state commissions, with review by the U.S. district courts. Under that unlikely scenario, the states, and not the Commission, would have authority over the interconnection agreements that are the subject of the ALTS letter.<sup>44/</sup>

The Commission should dismiss or deny the ALTS letter's request for a finding that calls to ISPs should qualify for reciprocal compensation under sections 251 and 252. It should also make clear that such traffic is jurisdictionally interstate. By doing so, the Commission will promote the development of consistent rules for ISP traffic.

A consistent national policy regarding ISP traffic is essential for development of the Internet and information services generally. The Administration's recent white paper on electronic commerce emphasizes the need for a predictable, minimalist, consistent, and simple legal environment to develop such commerce fully.<sup>45/</sup> Notably, that statement of Administration policy focuses on *global* electronic commerce using the Internet and other related information services, another recognition of the non-local nature of the ISP traffic that is the vehicle for this commerce.

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<sup>44/</sup> The Eighth Circuit also vacated the Commission's rule that required interconnection agreements negotiated before enactment of the 1996 Act to be submitted to state commissions for approval. See *Iowa Utilities Board*, *supra* note 9, at 51-53 (vacating 47 CFR § 51.303). Individual state commissions, and not the Commission, decide whether to require such preexisting agreements to be submitted for their approval.

<sup>45/</sup> See *A Framework For Global Electronic Commerce*, U.S. Government Report (rel. July 1, 1997), Principle 3.

Commission acquiescence in the ALTS letter would defeat the creation of a viable national policy regarding Internet service providers and other ISPs. A consequence of *Iowa Utilities Board* is that a Commission determination that ISP traffic originates on the network facilities of one carrier and terminates on the facilities of another would remove the Commission from any say over the regulatory treatment of that traffic under sections 251 and 252 of the Communications Act.<sup>46/</sup>

Although the Commission's jurisdiction over ISP traffic is clear, BellSouth recognizes the complicated nature of the issues within that jurisdiction. Indeed, incumbent LECs have only recently begun to identify Internet access traffic to CLECs. Thus, numerous regulatory issues, including the proper separations treatment of such traffic, remain to be resolved. The Commission may wish to consider convening a federal-state joint board to consider such treatment. The Commission's pending inquiry on information services is a proper vehicle for ultimately resolving these issues.<sup>47/</sup>

### III. CONCLUSION

The Commission should not issue the "clarification" requested in the ALTS letter. Because of the complex jurisdictional nature of ISP traffic, there is no basis for a finding that calls to an ISP originating on the facilities of one LEC terminate on the facilities of another LEC. Even if such a finding were tenable, which is not the case, the *Iowa Utilities Board*

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<sup>46/</sup> Indeed, the *Iowa Utilities Board* decision, while clarifying the respective roles of the Commission and state regulators in implementing sections 251 and 252, does not address the relationship between state regulations under those sections and the Commission's authority over pricing interstate access traffic such as the calls to ISPs at issue in the ALTS letter.

<sup>47/</sup> See *supra* note 27.

decision makes clear that, under the Act, the states, not the Commission, have jurisdiction over reciprocal compensation arrangements.

Accordingly, the Commission should dismiss or deny the ALTS letter and develop a consistent policy to promote the efficient development of the Internet and information services generally.

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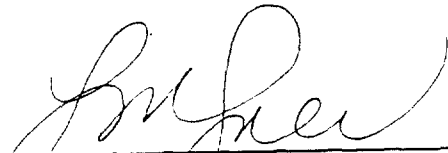
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